

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THERESA BERMAN, *et al.*,

Plaintiffs,

-v-

BELLEVUE SOUTH ASSOCIATES LLP, *et al.*,

Defendants.

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ELECTRONICALLY FILED

DOC #:
FILED: 5/21/09

No. 08 Civ. 10842 (RJS)
ORDER

RICHARD J. SULLIVAN, District Judge:

The above-captioned action was filed in New York Supreme Court on or about April 25, 2008. It was removed to this Court by Defendant American Red Cross on December 12, 2008. On December 22, 2008, Defendant American Red Cross filed a Demand for a Complaint.

On February 6, 2009, the Court issued an Order directing the parties to appear at a conference with the Court on February 26, 2009. Defendants Bellevue South Associates and the American Red Cross appeared at the conference. Plaintiffs failed to appear.

On February 26, 2009, the Court issued an Order directing Plaintiffs to file their Complaint and a notice of appearance by no later than March 12, 2009, and warning them that failure to comply with the Order might result in dismissal of this action. Plaintiffs failed to comply with the Order.

In an Order dated April 15, 2009, the Court warned Plaintiffs that the above-captioned action would be dismissed *with prejudice*, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, for failure to prosecute, if, by April 30, 2009, the Court had not *received* Plaintiffs' Complaint, a notice of appearance, and an explanation of Plaintiffs' failure to comply with the Court's prior Orders. Defendants served Plaintiffs with a copy of the April 15 Order twice — on April 17, 2009, and again on May 7, 2009.

To date, Plaintiffs have neither complied with the Court's Orders, nor made any other effort to contact the Court. Indeed, the Court has no address at which to reach Plaintiffs, and Defendant American Red Cross's efforts to serve Plaintiffs with the filings and Orders in this action, by various means, have been unsuccessful. (*See* Affidavit of Matthew J. McCauley.)

Further, Plaintiffs previously filed an action in state court asserting identical claims in April 2006; that action was removed to the Southern District of New York and eventually dismissed by the Honorable Lewis Kaplan, District Judge, under circumstances very similar to those in this action. (*See* No. 07 Civ. 7859 (LAK), Report and Recommendation of Magistrate Judge Andrew J. Peck.)

Accordingly, IT IS HEREBY ORDERED that the above-captioned action is dismissed *with prejudice*, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, for failure to prosecute and failure to comply with numerous Orders issued by the Court.

IT IS FURTHER ORDERED that Defendants shall serve Plaintiffs with a copy of this Order and file proof of service with the Court.

SO ORDERED.

Dated: May 20, 2009
New York, New York



RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE